

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on January 29, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Rick Dale (R)
Rep. Ron Erickson (D)
Rep. Gail Gutsche (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)

Members Excused: Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. David Ewer (D)
Rep. Joan Hurdle (D)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 350, 1/26/1999
Executive Action: HB 92; HB 205; HB 74; HB 270

HEARING ON HOUSE BILL 340

Sponsor: Rep. Shiell Anderson, HD 25, presented the bill. He explained the bill would preserve corner monuments that otherwise might be removed. This would address the problem where a person proposes to engage in an activity that will or is likely to disturb or destroy monuments or an accessory to the monuments then the person shall hire a registered surveyor to restore those. This would preserve the record as to where the monument was located. Currently, when there is nothing left for the surveyors to go by, results in an expensive survey.

Proponents: Warren Latvala, a land surveyor from Clyde Park, representing himself and the Montana Association of Registered Land Surveyors, spoke about the issue. The state of Montana considers survey monuments and property boundaries very important. He referred to the book that was published that tells all the regulations for land surveying and subdivisions. The book includes the Department of Commerce regulations, uniform standards for monumentation, uniform standards for certificates of survey to show what to use for monuments and final subdivision plats. The book also includes the Montana Corner Recordation Act. He described the regulations and penalties involved if land surveyors don't abide by those regulations. However, there is no book that covers what happens to the monuments after they are set. There is no protection for monuments, yet the value of monuments does not end after the certificate of survey is filed. **{Tape : 1; Side : A; Approx. Time Counter : 3.8 - 11.5}**

Opponents: None

Questions from Committee Members and Responses: Rep. Dale asked if this would protect stone monuments when the stone was reused. Mr. Latvala replied monuments were part of the public land surveying system and everybody has to protect them, not just surveyors.

Rep. Story asked if there was a penalty if they were not protected. Latvala replied there was no penalty. The bill would make the utility companies aware of the issue up front.

Rep. Stovall asked about the difference between rock monuments and benchmarks. Latvala explained that a marker is used as a physical object to clarify the corner or section line. In the 1870's the government set stones. Now, surveyors use brass caps. There is uniform standards for monumentation. Regulations tell what is needed. A benchmark is simply a point of known elevation, not a property mark. Rep. Harper asked what was an accessory to a monument. Latvala explained it was a physical

object with a known spacial relationship to a corner position. Early government surveyors used stones or bearing trees with inscribed marks. Now, if a corner marker is needed, knowing these are subject to destruction, a surveyor will set iron pins. If the monuments are gone, the surveyor can go to the reference pins.

Rep. Harper asked what happened when the trees are cut down. Latvala replied federal laws make it illegal to cut down a bearing tree, unless you make provisions to replace it with a marker.

Closing by Sponsor: Rep. Anderson closed. He said the importance of this bill was that it put people on notice to be more careful rather than removing a monument with impunity. *{Tape : 1; Side : A; Approx. Time Counter : 21.4}*

EXECUTIVE ACTION ON HOUSE BILL 92

Rep. Ohs **MOVED DO PASS.** The question was called. The motion **PASSED** with three no votes by Reps. Orr, McGee, and Bitney. *{Tape : 1; Side : A; Approx. Time Counter : 23}*

EXECUTIVE ACTION ON HOUSE BILL 205

Rep. Tash **MOVED DO PASS.**

Rep. McGee presented an amendment. **EXHIBIT(nah23a01)** He explained the amendment addressed circumstances when subdivisions occur. He pointed out there may or may not be a ditch on the property. The property may or may not have water rights. This attempts to cover a variety of conditions. Rep. McGee **MOVED** the amendments.

Rep. Tash noted these were friendly amendments which would coordinate efforts. It would make a good bill better. *{Tape : 1; Side : A; Approx. Time Counter : 29.8}*

Rep. Ohs asked Mike Murphy to respond to the amendment. Mike Murphy, Montana Water Resources Association, replied this was a good amendment and they were in favor of the proposal.

The question was called on the McGee amendment. The motion **PASSED UNANIMOUSLY.**

Rep. Tash presented an amendment to clarify language on page 2, line 12 and line 20. **EXHIBIT(nah23a02)** The purpose of these is to

clear up ambiguities regarding ditches that go into subdivided properties. Sometimes there is a question of where they are or if there are any ditches, for the purpose of filing and recording those easements and ditches along with the plat. Rep. Tash **MOVED DO PASS**. The question was called. The motion **PASSED UNANIMOUSLY**. Rep. McGee **MOVED DO PASS AS AMENDED**. The question was called. The motion **PASSED UNANIMOUSLY**.

EXECUTIVE ACTION ON HOUSE BILL 74

Rep. Ohs **MOVED DO PASS**. He distributed amendments requested by Rep. Mood. **EXHIBIT (nah23a03)**

Rep. Raney referred to language on page 4 and 5 regarding the proceeds of bonds. He said he was opposed to taking money out of a program and letting an agency spend it on administrative costs. Anna Miller, DNRC, replied that the program allowed some federal money could be used and bond proceeds had to be matched for that. She pointed out because this was a construction program and applicants applied to the program, the department had review the plans and do a financial analysis on each community. The federal government supply some funding to administer the program. There is a 4% cap on this but it allows the department to do all that work and it has to be matched with bond proceeds money. **{Tape : 1; Side : A; Approx. Time Counter : 38.9}**

Rep. Mood **MOVED** the amendment.

Anna Miller, DNRC, explained a flow chart of funds. **EXHIBIT (nah23a04)** The amendment addresses equalizing the funds. The department would like to be able to move funds between program, which the federal regulations allow. The federal allocation account and the state allocation account is how they get the money to fund the loans for the communities. They get a federal grant and then they sell bonds to match those funds. The communities apply and the department makes loans to them. She explained the flow chart and how the loans worked. The wastewater account generates more cash since it has been around longer.

Rep. Younkin suggested the bill be postponed until technical questions were answered, such as federal eligibility citations in the Safe Drinking Water Act.

Rep. Raney said the whole issue he was concerned with was he did not think money should be taken out of a program to administer the program. Money should be appropriated for an agency to run a program but not take money back out of that program.

Rep. Orr pointed out the concerns were with the expansion of uses of the funds. He would like to see the uses narrowed down and delineated.

Rep. Younkin **MOVED TO POSTPONE**. The question was called. The motion **PASSED UNANIMOUSLY**.

Rep. McGee requested a Grey Bill.

{Tape : 1; Side B}

EXECUTIVE ACTION ON HOUSE BILL 270

Rep. McGee **MOVED DO PASS**.

Rep. Story **MOVED THE TREXLER AMENDMENT**. **EXHIBIT**(nah23a05) Rep. Trexler explained the word "and" was needed in two sections.

Rep. Younkin asked for explanation of #5. Kathleen Williams said the amendment addressed parcels that were saleable tracts, this amendment would put them back into having sanitary restrictions on them. **{Tape : 1; Side : B; Approx. Time Counter : 5.3}**

Rep. Harper asked for a response from DEQ. Janet Hedges responded about the environmental issues. As the bill reads, the parcels would be excluded from review. The division of land definition was put into the sanitation subdivision act so that those parcels would still be reviewed. That review is for water quality, quantity and dependability, solid waste, wastewater disposal, storm water and things like that. The environmental review would happen for those things for those parcels under 20 acres. The other review that the subdivision and platting act does for the roads, fire and wildlife would not happen. **{Tape : 1; Side : B; Approx. Time Counter : 8.6}**

Kathleen Williams noted two words should be included on the amendment on page 2, where it says the identify of the segregated parcels, should say "parcel" or "a parcel".

Rep. Younkin **MOVED** to include the word "parcel". The question was called. The motion **PASSED UNANIMOUSLY**.

The question was called on the Trexler amendments. The motion **PASSED UNANIMOUSLY**.

Rep. McGee **MOVED HB 270 AS AMENDED**.

Rep. Erickson said he felt a century's old surveying system should substitute for the subdivision and platting act. He

thought the consequences were devastating in regards to planning. He thought this would result in thousands of new parcels and different appraisals. **{Tape : 1; Side : B; Approx. Time Counter : 11.7}**

Rep. Raney thought there would be new homes and cabins cropping up in places never imagined. He asked what were the unintended consequences. He thought since all the Realtors were supporting this there was money to be made.

Rep. Mood pointed out the issue was if we were comfortable allowing the Attorney General to reverse 100 years of policy in recognizing plats of land in a single pen stroke. These lands were separate parcels for hundreds of years. The issue is not whether they were subdivided. The issue is the policy, whether we are comfortable allowing the Attorney General to make that policy. **{Tape : 1; Side : B; Approx. Time Counter : 15}**

Rep. Harper thought that if the committee voted for the bill, we would be subdividing the state of Montana. He explained that this would allow a technicality to make a subdivision exempt from review and it would start a Montana land rush.

Rep. Younkin pointed out this was not a subdivision bill. The Subdivision and Platting Act was amended in 1993 to reduce the size of the acres to 160. Prior to then, there were parcels that may have been twenty acre parcels and it may have been on a deed with another twenty acre parcel. All of a sudden, in 1993, the Attorney General has decided that those have become one parcel if they are on one deed. Parcels of land may have been separated 50 years ago. Those who are opposed to this issue are trying to infringe on private property rights on parcels that were created a long time ago and also trying to regulate land use without going through the appropriate channels of legislation. **{Tape : 1; Side : B; Approx. Time Counter : 18.2 - 20.6}**

Rep. McGee said as a surveyor he deals with legal descriptions continually. He said he did not want to see Montana turned into a San Diego. He asked: What does a person have a right to? What is the truth about what he owns? What can communities do in the way of controlling growth and controlling development, planning ahead? Today, on the books, there are all the tools that are necessary for a county to be able to deal with whatever they choose. For example, Sweetgrass County zones. You cannot create a parcel of land, in some cases less than 160 acres in some cases 320 acres, and this bill won't change that fact. They can zone, they can plan. It is not the same issue as what is entitled to the individual who purchased something. For example, if you have two cars in a garage, there can't be an Attorney General's

opinion to suggest you have one car, but that is exactly the same situation. Rep. McGee emphasized this is a property right issue--a person is entitled to exactly what they have, that is what they are getting taxed on. They don't get taxed on the aggregate, they get taxed on the individual parcels as they are defined according to the deed. If a person has all the ownership they currently have, but they have five parcels on a deed, if they have five pieces of paper, no one would argue that they have five parcels. The question isn't in ownership. The question is in legal definition of the land. He pointed out the options: Should we regulate to control growth by controlling sales? Should we zone? Can we master plan? He described a 1985 EQC meeting in Great Falls, where an individual from St. Louis gave a talk and said "do not make the mistake, when you are setting this up, do not make the mistake of planning by land divisions". Statewide Zoning was one suggestion. McGee pointed out the need to face the truth about what a person owns.

Rep. Mood noted years ago when a person wanted to save \$6 on his filing fee and decided to put five parcels on one title. That act took away his right to have separate pieces of property.

The question was called. A roll call vote was taken. The motion **FAILED** on a 10-10 vote. However, four no votes did not have proxies.

Rep. McGee **MOVED TO TABLE HB 270.** The motion **PASSED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 4:35 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah23aad)